

**GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT**

(G.O. Rt. No. 20/Lab./AIL/T/2016, dated 19th April 2016)

**NOTIFICATION**

Whereas, an award in I.D. (L) No. 41/2015, dated 17-2-2016 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Puducherry Agro Products Food and Civil Supplies Corporation Limited (PAPSCO), Puducherry and Thiru P. Sivaraman over refusal of employment and seniority has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour) that the said Award shall be published in the Official Gazette, Puducherry.

(By order)

**E. VALLAVAN,**  
Commissioner of Labour-cum-  
Additional Secretary to Government (Labour).

**BEFORE THE LABOUR COURT AT PONDICHERRY**

*Present :* Thiru N. SIVAKUMAR, B.A., M.L.,  
Presiding Officer, Labour Court.

*Wednesday, the 17th day of February 2016*

**I.D. (L) No. 41/2015**

P. Sivaraman,  
S/o. Pakkiri, aged about 40 years  
No. 32, Gurusidhananda Nagar,  
Navarkulam, Lawspet,  
Puducherry - 605 008. . . Petitioner

*Versus*

The Managing Director,  
M/s. PAPSCO,  
Having its office at Agricultural Complex,  
Thattanchavady, Puducherry. . . Respondent

This industrial dispute coming on this day before me for hearing in the presence of Tvl. S. Vimal and K. Ashok Kumar, Counsels for the petitioner, respondent called absent, set *ex-parte*, upon perusing the case records, this Court passed the following:

**AWARD**

This industrial dispute has been referred as per the G.O. Rt. No. 86/AIL/LAB/J/2015, dated 3-8-2015 for adjudicating the following :

(1) Whether the dispute raised by the petitioner Thiru P. Sivaraman against the management of M/s. Puducherry Agro Products Food and Civil Supplies Corporation Limited (PAPSCO), Puducherry over non-employment and seniority is justified?

(2) If justified, what relief the petitioner is entitled to ?

(3) To compute the relief, if any awarded in terms of money, if it can be so computed?

2. The facts giving rise to this industrial dispute as stood exposted from the claim petition runs thus:-

(i) The petitioner completed his Diploma in Pharmacy at Mother Theresa Institute of Health Science and employed as a Daily Rated Labour with the respondent management since 24-12-2004. From the date of joining, the petitioner was regular in service with the respondent management as a dutiful employee without any sort of black mark. The petitioner was placed at No. 123 of the Tentative Seniority List of need based daily rated labour in No.1-22/Estt./PAPSCO/2009-10, dated 5-11-2009 as issued by the Managing Director of Respondent Management. The petitioner was diagnosed with 'Rheumatic Heart Disease' and was informed to take medical treatment for about two months. The petitioner promptly took steps to inform the respondent management about the same *vide* letter, dated 19-4-2012. The petitioner was admitted as an inpatient from 20-4-2012 till 14-6-2012 at JIPMER Hospital. Thereon, he was advised rest from 14-6-2012 for 180 days. The said fact is evident from the Medical Certificate issued to the petitioner on 27-11-2012 by JIPMER Hospital, Puducherry.

(ii) The petitioner was again advised rest for 152 days with effect from 16-12-2012 as necessary for restoration of his health by the Medical Officer, Primary Health Centre, Kirumampakkam, Puducherry. However, despite medical advice for rest till 16-5-2013, petitioner tried to inform his willingness to resume work with the respondent establishment and took efforts from the 1st week of May, 2013 but, he was not duly responded. On one of his such visits, petitioner found that the respondent establishment once again published a temporary list of daily waged employees on 26-4-2013. On perusal

of said list, petitioner shocked to find that his originally stood at a seniority No. 123 since 2009 was suddenly missing in the final seniority list, dated 26-4-2013 displayed by the respondent management. Immediately without any loss of time petitioner brought the said facts to the respondent's notice *vide* his letter, dated 13-5-2013 and sought for the restoration of his name in the list.

(iii) Later on 16-5-2013, he submitted a letter along with fitness certificate issued by the Medical Officer of Primary Health Centre, Kadirkammam expressing his willingness to join the work but, was not entertained. Respondent authorities turned down his request by informing that he would be called for the job through a written communication, and thereby refused his work despite there was availability of ample work.

(iv) Respondent did not allow him to resume work despite his willingness to do so. Later, on 27-6-2013, the respondent displayed a final seniority list of daily wagers employed with them, wherein his name was still missing despite his letter, dated 13-5-2013 seeking to include him in the list of employees. He was left perplexed to see that inspite of his letter, his name was missing in the final seniority list while he was on medical leave due to ill health. Respondent's such conduct caused too much of mental agony apart from physical and financial hardship to petitioner.

(v) Further, petitioner was shocked to know that his juniors were promoted in his place, while he was unceremoniously and illegally removed/terminated/retrenched from employment without due process of law. Respondent's termination/refusal of employment to him without following the social security measures provided under various statutes including the Industrial Disputes Act and Industrial Disputes (Central) Rules framed therein is most unjust, unethical and against all the principles of law and natural justice amounting to victimisation and condemning of an employee without giving any opportunity.

(vi) Petitioner pleaded for reinstatement to work with the respondent many times but, he was least responded. Hence, with no other alternative, he approached the Conciliation Officer for settlement.

(vii) The respondent filed their reply on 16-10-2014 before the Conciliation Officer. A perusal of the reply would show that the respondent establishment has failed to justify his retrenchment

as known to law, but, rather confirmed that they had not followed the mandatory provisions of law and principles of natural justice while terminating/retrenching petitioner's employment with respondent.

(viii) The petitioner prays this Court (i) to declare that the respondent's act of retrenchment of the petitioner from employment is illegal as opposed to law and principles of natural justice, and direct the respondent to restore his seniority status at No. 123 as existed prior to 26-4-2013 with all the benefits appertaining thereto, (ii) to direct the respondent to reinstate the petitioner to work with all back wages and benefits appending to his work with interest at the rate of 18% and thereby stop his employer from victimising him, in the interest of justice (iii) and for costs.

3. No counter was filed on behalf of the respondent. since the respondent remained *ex-parte*.

4. On the side of the petitioner, WW.1 was examined, and Ex.W1 to Ex.W10 were marked.

5. The point for consideration is:

Whether the industrial dispute can be allowed?

6. *On this point :*

Heard learned Counsel on record for the petitioner and perused oral testimony of WW.1 and documentary evidence, namely, Ex.W1 to W10.

7. The respondent has not chosen to appear before this Court and contest the matter.

8. Petitioner P. Sivaraman while testifying himself as WW.1 has categorically stated that he completed diploma course and employed with the respondent industry as a daily rated worker since 20-12-2004. To show his employment he has produced his Identity Card as Ex.W.1. He was placed with rank No. 123 in the tentative seniority list of need based daily rated labour as seen from Ex.W.2. In the year 2012, the petitioner was diagnosed with Rheumatic Heart Disease and advised to take medical treatment and rest for months together. The petitioner has informed about his health condition to the management as per Ex.W.3 letter, dated 19-4-2012 and it was duly acknowledged by the respondent management. Ex.W.4 is the medical certificate, dated 27-11-2012 pertaining the petitioner and it discloses that he was admitted in JIPMER for "Redo Open Heart Surgery - Mitral Valve Replacement" for Rheumatic Heart Disease and admitted as inpatient for a period from 20-4-2012 to 14-6-2012. After the open heart surgery the petitioner was medically advised to take rest

for a long time period. The respondent management removed the name of the petitioner from the seniority list, and to show this fact. Petitioner has produced Ex.W.5 of statement showing final seniority list of need based daily rated workers working in the PAPSCO, dated 27-6-2013.

9. A perusal of Ex.W.5 would disclose that petitioner's name does not find place in this list since he was continuously absent as medical ground. So, the petitioner has sent Ex.W.6 representation, dated 13-5-2013 requesting the respondent management to consider his seniority and include his name in the list. Further, the petitioner wrote Ex.W.7 letter along with fitness certificate requesting the management to reinstate him since he was fully recovered. As the respondent management was not amenable and not willing to reinstate the petitioner he sent representation to the Conciliation Officer and copy of the same is marked as Ex.W.8. Ex.W.9 is the copy of the counter, filed by the respondent before the Conciliation Officer. Again the petitioner has sent Ex.W.10 rejoined, dated 11-11-2014 to Ex.W.9 counter filed by the management.

10. The respondent though resisted the claim before the Conciliation Officer has not chosen to contest the industrial dispute in this Court. Since, the respondent failed to file his counter inspite of repeated adjournments it was set *ex-parte*.

11. The petitioner is a diploma holder and appointed as a daily rated labour in the respondent management on 20-12-2004. He was a sincere worker and there was no adverse remarks against him. The petitioner was suffering with Rheumatic Heart Disease and he was medically advised to undergo mitral valve replacement by open heart surgery. The petitioner has duly informed the respondent management about his ill-health condition the proposed heart surgery by sending its Ex.W.3 letter. But, the respondent has not considered the request of the petitioner and necessary leave on medical grounds was not sanctioned. Originally, the petitioner was placed in rank No.123 in the seniority list as seen from Ex.W.2. The petitioner was advised to undergo rest for six months from 14-6-2012, since, he had undergone open heart surgery for mitral valve replacement as seen from Ex.W.4 medical certificate. Since, the petitioner was suffering from severe heart disease and undergone open heart surgery, he applied for long leave but it was not properly considered by the respondent. Petitioner's absence due to medical grounds that too by informing the management about the open heart surgery in time, cannot be construed as unauthorised absence.

12. The petitioner while undergoing rest during post operative heart surgery, his name was removed from the seniority list. Thereafter, the petitioner made several attempts seeking reinstatement by producing fitness certificate but, the respondent management was stubborn and reluctant to consider representation of the petitioner and to reinstate him.

13. Of course, the petitioner was working only as a daily rated worker and allotment of work to the daily rated workers will be on the basis of requirement. Anyhow, the respondent management has prepared a seniority list for allotment of work to the daily rated workers. Originally, the petitioner was placed in SI. No. 123 but, subsequently his name was removed due to his continuous absence on medical grounds. Considering the conduct of the petitioner while, he was working with the respondent management for many years without any remarks and also taking note of his serious heart ailment and open heart surgery for replacement of mitral valve and also his representations made to the respondent management I consider that the claim of the petitioner for reinstatement and restore his seniority status as existed prior to 26-4-2013 has to be allowed. Whereas, his prior for full back wages with interest at the rate of 18% cannot be entertained legally on the basis of the principle of no work, no pay. Accordingly, this industrial dispute is partly allowed, and the respondent is directed to reinstate the petitioner as Daily Rated Labour within one month regarding the prior of back wages and benefits' appending his service with interest of 18% per annum is dismissed and accordingly this point is answered.

14. In the result, this industrial dispute is partly allowed and the respondent is directed to reinstate the petitioner as daily rated labour within one month by restoring his original seniority as found in Ex.W2 (tentative seniority list of need based daily rated labour in Ex.W2) prior to 26-4-2013. Regarding the prayer of back wages and benefits appending his service with interest at the rate of 18% per annum is dismissed.

Dictated to the Stenographer transcribed by her, corrected and pronounced by me in the open Court on this the 17th day of February, 2016.

**N. SIVAKUMAR,**  
Presiding Officer,  
Labour Court, Puducherry.

*List of petitioner's witness:*

WW.1 — 23-1-2016 — P. Sivaraman (Petitioner)

*List of respondent's witness:*

— Nil —

*List of petitioner's exhibits :*

Ex.W.1 — Copy of the petitioner's identity card issued by the Respondent (Photocopy).

Ex.W.2 — Copy of the tentative seniority list of need based daily rated labour in No. 1-22/Estt./PAPSCO/2009-10, issued by the Managing Director of the Respondent Establishment, dated 21-2-2009 (Photocopy).

Ex.W.3 — Copy of the petitioner's letter to respondent's office with their seal and signature for receipt, dated 19-4-2012 (Photocopy).

Ex.W.4 — Copy of the petitioner's medical certificate, dated 27-11-2012 (Photocopy).

Ex.W.5 — Copy of the circular and final seniority list of employees displayed by the respondent, dated 27-6-2013 (Photocopy).

Ex.W.6 — Copy of the petitioner's letter to the respondent's office, dated 13-5-2013 (Photocopy).

Ex.W.7 — Copy of the petitioner's letter along with fitness certificate issued by the Medical Officer of Primary Health Centre, Kirumampakkam, dated 16-5-2013 (Photocopy).

Ex.W.8 — Copy of the petitioner's letter to the conciliation officer, dated 7-7-2014 (Photocopy).

Ex.W.9 — Copy of the respondent's reply before the conciliation officer, dated 16-10-2014 (Photocopy).

Ex.W.10 — Copy of the petitioner's letter to the conciliation officer in response to respondent's reply, dated 11-11-2014 (Photocopy).

*List of respondent's exhibits:*

— Nil —

**N. SIVAKUMAR,**  
Presiding Officer,  
Labour Court, Puducherry.

## GOVERNMENT OF PUDUCHERRY

## LABOUR DEPARTMENT

(G.O. Rt. No. 21/Lab./AIL/T/2016, dated 19th April 2016)

## NOTIFICATION

Whereas, an award in I.D. (L) No.24/2012, dated 24-2-2016 of the Labour Court, Puducherry in respect of the industrial dispute between Chemcrown Exports and Suolificio Linea Italia Private Limited, Thozhilalar Sangam, Puducherry and the management of M/s. Chemcrown Exports Limited Unit-III and M/s. Suolificio Linea Italia (India) Private Limited, Puducherry over non-employment of 12 employees has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour), that the said award shall be published in the Official Gazette, Puducherry.

(By order)

**E. VALLAVAN,**  
Commissioner of Labour-cum-  
Additional Secretary to Government (Labour).

## BEFORE THE LABOUR COURT AT PONDICHERRY

*Present :* Thiru N. SIVAKUMAR, B.A., M.L.,  
Presiding Officer, Labour Court.

*Wednesday, the 24th day of February 2016*

## I.D. (L) No. 24/2012

The President, . . . Petitioner  
Chemcrown Exports and  
M/s. Suolificio Linea Italia  
Private Limited Thozhilalar Sangam,  
Puducherry.

*Versus*

1. The Management,  
Chemcrown Exports Limited  
Unit-III, Puducherry.  
2. The Management,  
Suolificio Linea Italia (India)  
Private Limited, Puducherry. . . Respondents.

This industrial dispute coming on 4-2-2016 for final hearing before me in the presence of Thiru R.T. Shankar, Counsel for the petitioner, Thiru K. Ranganathan, Counsel for the first respondent and Thiru A. Latchoumicandane, Counsel for the second respondent and upon hearing both sides, perusing the case records and having stood over till this day for consideration, this court delivered the following:

#### AWARD

This industrial dispute has been referred as per the G.O. Rt. No. 114/ AIL/Lab./J/2012, dated 13-7-2012 for adjudicating the following:-

1. Whether the dispute raised by the union workmen Chemcrown Exports and Suolificio Linea Italiya Private Limited, Thozhilalargal Sangam against the management of M/s. Suolificio Linea Italia (India) Private Limited, over non-employment of 12 employees viz., (1) A. Ravichandran, (2) K. Kaliyamoorthy, (3) A. Subramanian, (4) A. Lakshmanan, (5) E. Selvam, (6) T. Srinivasan, (7) K. Ezhumalai, (8) S. Ramesh, (9) A. Arumaiselvam, (10) R. Murugan, (11) P. Sekar, (12) S. Magesh are justified?

2. If justified, to what relief the workmen are entitled to?

3. Whether the management of M/s. Chemcrown Exports Limited-Unit-III, Sedarapet, Puducherry is liable to pay the closure compensation to the above mentioned employees? If so, to give appropriate directions?

4. To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The facts giving rise to this industrial dispute as stood exposted from the claim petition runs thus:-

2(i) The petitioner is a trade union and the 12 members/workers of the petitioner union were working as permanent employees in the first respondent factory, namely. Chemcrown Exports Limited, Unit-III, Puducherry which was engaged in manufacturing of leather products. There was a fire accident in the first respondent's factory on 8-12-2010 and thereafter the company declared lay-off, but the petitioner's regularly came to the factory and signed for a few days. Then the first respondent management refused to get signature of the 12 workers. On 21-2-2011 the first respondent issued closure notice stating that the company was deemed to be closed since 23-1-2011. In the closure notice 1st respondent has declared to pay four months' salary only as full and final settlement irrespective of the service of the workers. The announcement of 1st respondent for

payment for four months salary as final settlement is illegal. Some of the trainees accepted the final settlement and left to some other concerns. But the 12 workers concerned with the industrial dispute have refused to receive final settlement amount, and insisted for their reinstatement in 2nd respondent since it is a sister concern of the first respondent and it is also functioning within the same premises. Both respondents 1 and 2 have been registered under Companies Act in the office of Registration of Companies, Kolkata. So, the laid off workers requested for re-employment in the second respondent management and it was not accepted, The dispute was dealt with Conciliation Officer, but no settlement was arrived at and failure on Conciliation Report was submitted. In pursuance of the same a notification G.O was issued and the same is referred to this court for adjudication. 2(ii) In the year 1991 Chemcrown Exports Limited, Unit-I was started with 20 workers. Then 'Chemcrown India Limited Unit-II was started in the year 1998 with 100 workers in the same premises and in the year 2000 the name of the factory was changed as 'Chemcrown Exports Limited, Unit-II' and this factory was subsequently closed.

(1) In the year 2001 another factory by name Dye-Chem (India) Limited was started in the same premises and the employees working in Chemcrown India Limited, Unit-II, were engaged in Dye-Chem (India) Limited and this factory was also closed.

(2) In the year 2005 the second respondent, namely, M/s. Suolificio Linea Italia (India) Private Limited was started in the same premises and the workers of Dye-Chem (India) Limited, were observed in this factory. In the year 2005 Chemcrown Exports Limited Unit-I was closed and the name of the factory was changed as Chemcrown Exports Limited Unit-III (first respondent) and started as if it was a new factory. As more number of workers were required for the first respondent some of the employees from the second respondent were transferred to the first respondent. The first respondent was totally damaged due to fire accident, and the 12 workers concerned with the industrial dispute, namely, (1) A. Ravichandran, (2) K. Kaliyamoorthy, (3) A. Subramanian, (4) A. Lakshmanan, (5) E. Selvam, (6) T. Srinivasan, (7) K. Ezhumalai, (8) S. Ramesh, (9) A. Arumaiselvam, (10) R. Murugan, (11) P. Sekar, (12) S. Magesh were permanent employees and they had been directed to work in the different units. The management of both the respondents are one and the same. Under the provisions of the Industrial Dispute Act 1947, and as per the guidelines of the Hon'ble Supreme Court of India to decide whether the respondents 1 and 2

are one establishment, the following points have to be taken into account (1) Ownership (2) Control and Supervision (3) Finance (4) Management and Employment (5) Geographical Proximity and (6) General Unity of Purpose and Functional Integrality. On analysing the above referred points, relating to the respondents 1 and 2 this court can easily come to the conclusion that both establishments are having functional integrality.

2(iii) Respondents No. 1 and 2 are registered in the same Registrar Office, namely, Registrar of Companies, Kolkata. West Bengal. Thiru Balidoliya Bhaiya @ B.D. Bhaiya and his two sons, namely (i) Manoj Bhaiya and (2) Mukund Bhaiya are the proprietors/directors of both respondents. Both the companies are supervised by the same management. There is only one trade union by name Chemcrown Exports and M/s. Suolificio Linea Italia Private Limited Thozhilalar Sangam, Sedarapet, (Registration No. RTU/1338/2003) *i.e.*, petitioner union and it is functioning for the welfare of workers of both respondents. Both respondents have jointly entered into two settlements with petitioner trade union (under section 18(1) of Industrial Disputes Act) on 15-2-2007 and 28-4-2010.

2(iv) As per in the information furnished by the Government, the factory namely, Chemcrown Exports Limited, Unit-II has been name changed and now it is functioning as M/s. Suolificio Linea Italia (India) Private Limited, (second respondent). So, it is evident that both the respondents have engaged in the same business under the same management and the directors of both the factories are one and the same, and the workers have been shifted from one factory into another factory as per requirement. So, the retrenched 12 workers have to be accommodated in the second respondent's factory. So, the industrial dispute has been raised to declare that the first respondent which was damaged due to fire accident has been re-started by changing name as Suolificio Linea Italia (India) Private Limited, (second respondent) and both the establishment and the same, and to direct the second respondent to engage/reinstate the 12 workers of the petitioner union with backwages, continuity of service and other attendant benefits and to render justice.

3. The facts set out in the counter filed by the first respondent management are stated as follows:-

3(i) It is false to state that the second respondent is the sister concern of the first respondent. The first and second respondents are distinct and different factories and they are having separate owners and

shareholders. The said Companies are independent of each other having separate control of management, accounting, standing orders separate ESI accounts, Provident fund accounts and nature of business. The employees of the abovesaid factories are governed by their own rules and regulations. The said establishments are not managed by same family. The first respondent has leased out a portion of its premises to the second respondent in which it is running the factory and the same cannot be construed that the abovesaid companies are one and the same. There was a fire accident on 8-12-2010 in first respondent's factory and the entire goods, machineries and materials were totally damaged. So, the first respondent company could not run due to the fire accident and lay-off was given to the workers and lay-off salary was duly disbursed. All the employees of the first respondent factory were settled properly, and all their dues cleared by the company except the petitioner (12 workers). The workers are legally entitled to get only three months wages as compensation under Section 25(FFF) of the Industrial Disputes Act but the first respondent offered four month's salary as compensation to the workers. The first respondent cannot make any arrangements for accommodating the 12 workers in the second respondent factory/company. The first respondent has no right or control over the second respondent management. Hence the petition is devoid of merits and liable to be dismissed.

4. The facts set out in the counter filed by the second respondent management are stated as follows:

4(i) The two companies, namely, respondents No.1 and 2 are independent of each other having separate management control, accounting, standing orders etc., and the employees of the second respondent are governed by their own rules and regulations. The second respondent was incorporated on 11-5-2005 and it was registered under Companies Act by the Registrar of Companies at Kolkata. The second respondent is a joint venture company of foreign investors and Indian investors and it is distinct and separate from the first respondent. The question of absorption of the workers of the first respondent in the second respondent company does not arise and the claim of the petitioners is misconceived and unsustainable in law.

4(ii) It is not true that some of the employees of the first respondents were transferred to the second respondent since 2005. The second respondent is engaged in carrying on the business of manufacture and sale of leather shoe sole and components made

of plastic polymer and the like. The goods are mainly exported to different places in Europe and other countries in the west besides selling within the country. The second respondent has been incorporated with foreign and Indian investors as a separate entity distinct from the first respondent. The management and control and administration, standing orders, disciplinary rules are done separately under the directions of a separate Board of Directors distinct from the first respondent.

4(iii) As the second respondent did not have a premises for manufacture, it entered into lease agreement with the first respondent to commence production of goods in one portion of the premises owned by the first respondent. Location of the factory cannot be a criteria to hold that the first and second respondents are one and the same establishment under the common management.

4(iv) It is false to state that the services of the employees of the first respondent were transferred to that of the second respondent since 2005. memorandum of settlement under section 18(1) of the Industrial Disputes Act entered into between the workers of Chemcrown Exports Limited and the first respondent as one document only for the sake of convenience and not with a view to combine the services of the employees as if the companies are one and the same. As there is a single union for employees of both the companies and the union gave a common Charter of Demands and this was the reason why a common settlement agreement was entered into.

4(v) A transfer of licence from Chemcrown Exports Limited, Unit-II to M/s. Suolificio Linea Italia India Private Limited, was made on a separate application by the second respondent and this cannot be considered to prove that both the companies came under the same management. Location of two companies for their manufacturing activity or registered office in one and the same premises cannot be prima facie evidence and depends on availability of place, convenience of the investors and other relevant matters. When the second respondent company was in search for a place for carrying on manufacturing activity, the first respondent came forward to offer its premises and the factory buildings on lease, and so the manufacturing unit was located at the present place. The fact that some of the directors are common in Board of Directors of both the respondents cannot be prima-facie evidence leading to the conclusion that both the entities are one and the same. The Companies Act permits

persons to function as directors in different companies at the same time subject to a limit. The fact that Sri B.D. Bhaiya and his two sons Sri Manoj Kumar Bhaiya and Sri Mukund Bhaiya are found to be in both the companies is no criteria in favour of the claim of the petitioners. The claim of the petitioner union is not justified and it is unsustainable in law and hence this industrial disputes is liable to be dismissed with exemplary costs.

5. On the side of the petitioner trade union PW1 Thiru A. Ravichandran has been examined and Ex.P1 to P24 were marked. On the side of the respondents RW1 (D. Vijayarajan) and RW2 (B. Balasubramanian) have been testified and Ex.R1 to R12 were marked.

*6. The point for consideration:*

Whether the first respondent and the second respondent was having functional integrality and the petitioner (12 workers) of the 1st respondent are entitled to be reinstated in the 2nd respondent factory with all service benefits since the 1st respondent issued closure notice on account of a fire accident?

*7. On this point:*

The first respondent, namely, M/s. Chemcrown Exports Limited (Unit-III, Puducherry) was incorporated on 26-8-1976 under the Company's Registration Act by the Registrar of Company, Kolkata, West Bengal. The said company engaged in manufacture of TPR PVC Soles for foot wears/shoes. The petitioner trade union, namely, Chemcrown Exports and Suolificio Linea Italia Private Limited Thozhilalar Sangam is the trade union which took care of the welfare employees of the first respondent. Admittedly on account of a fire accident on 8-12-2010 the entire factory building of the first respondent with finished goods, machineries, raw materials, furniture and office equipments were damaged. So, the management of the first respondent decided to close down the factory establishment with effect from 23-1-2011, and accordingly Ex.P1 notice of closure, dated 21-2-2011 was issued to all the workmen informing all the workers that their service were terminated with effect from 23-1-2011. Most of the employees and trainees received closure compensation and left the first respondent. Only 12 workers, namely, (1) A. Ravichandran, (2) K. Kaliyamoorthy, (3) A. Subramanian, (4) A. Lakshmanan, (5) E. Selvam, (6) T. Srinivasan, (7) K. Ezhumalai, (8) S. Ramesh, (9) A. Arumaiselvam, (10) R. Murugan, (11) P. Sekar, (12) S. Magesh who are members of the petitioner trade union declined to receive closure compensation but insisted for reinstatement in the second respondent factory which is a sister concern of the first respondent having its factory within the same premises wherein the first respondent was located.

8. According to the petitioners Chemcrown Unit No. 1 was started in the year 1991 with 20 workers (the above referred 12 workers) and in the year 1998 Chemcrown India Limited Unit-II was started in the same premises with 100 workers, in the year 2000 the name of 'Chemcrown India Limited Unit-II' was changed as 'Chemcrown Exports Limited Unit-II' and it was subsequently closed. The same management started Dye-Chem (India) Limited, factory in the same place, wherein, Chemcrown India Limited, Unit-II, was functioning and it was also closed later. In the year 2005 the same management started Suolificio Linea Italia (India) Private Limited, (2nd respondent) in the place wherein Dye-Chem (India) Limited, was functioning.

9. So, it is clear that after closing down "Chemcrown Exports Limited Unit-I" the same factory started functioning with the name of "Chemcrown Exports Limited Unit-II" and again this unit was also closed and started the second respondent unit in the same place. The workers from first respondent were frequently transferred and shifted to 2nd respondent, according to requirements. The management of both first and second respondent jointly entered two settlements with the petitioner trade union on 15-2-2007 (Ex.P20) and on 28-4-2010 (Ex.P21) under section 18(1) of Industrial Disputes Act petitioner trade union represented employees of both respondents 1 and 2 and settlements under section 18(1) was entered between the common management of both respondents with the petitioner trade union, regarding the wages and working condition of the workers/employees.

10. It is seen from Ex.P23 licence docket that Chemcrown Exports Limited, Unit-II has been subsequently name changed as Suolificio Linea Italia (India) Private Limited, (second respondent) and it is functioning within the same premises.

11. The learned counsel for the petitioner argued that management of both respondents is one and the same and both the factories are located within the same premises and there is only one trade union for both the industries and they engaged in manufacture of same products by transferring and exchanging labours as per requirement so the second respondent is nothing but a sister concern of the first respondent since there is functioning integrality, so the petitioners 12 workers are entitled to get re-employment in the second respondent factory.

12. *Per contra*, the counsels on record for respondents 1 and 2 have contended that first respondent and second respondent are distinct and separate entities functioning under different management's and second respondent was started in the year May 2005

and it has no links with the first respondent. Though some of the directors of both the industries are common and the second respondent is located in a portion of the first respondent's factory it cannot be presumed that both the industries are related and have functional integrality. Only for the sake of convenience one trade union (Petitioner) has been recognized for both the industries by the managements for the purpose of entering settlements under section 18(1). The first respondent is ready to pay closure compensation to the petitioners (12 workers) since the second respondent is a different industry not connected with the first respondent, so the second respondent cannot be compelled to engage the petitioners and this industrial disputes has to be dismissed.

13. On behalf of petitioner trade union Thiru A. Ravichandran has been examined as PW1 and he has categorically explained the facts of functional integrality between the first and second respondent by producing relevant documents, It is an admitted fact that first respondent was started in the year 1996 and engaged in the business of manufacturing PVC Soles for foot wears and shoes and the fire accident that occurred on 8-2-2010 totally damaged and destroyed 1st respondent factory. It is true the second respondent was started on 11-5-2005 within the same premises of the first respondent.

14. The company master details of first and second respondents have been produced as Ex.P6 and P7, Ex.P6 discloses that first respondent, namely, Chemcrown Exports Limited, was incorporated on 26-8-1976 and it was registered under the Companies Act, in the office registrar of Companies, Kolkata having registered office at 95, Park Street, Second Floor, Kolkata. The other particulars of this company have been mentioned in Ex.P6. Ex.P7 is the master details of second respondent. It is seen from Ex.P7 that the second respondent was incorporated on 11-5-2005 and registered by the same Registrar of Companies, Kolkata, having the same registered office at 95, Park Street, Second Floor, Kolkata. Admittedly, both the factories are located in the following address No.19/1 and 4/4, Southern Side, Mailam' Main Road, Sedarapet, Puducherry. Ex.R2 is the Value Added Tax Registration Certificate of second respondent (Form-D) and Ex.R3 is the Certificate of Registration (Form-B). Ex.R4 is the copy of the Memorandum and Articles of Association of second respondent. Central Excise Registration Certificate pertaining to the second respondent is produced as Ex.R5. It is admitted that the second respondent factory is located within the portion of the first respondent factory in the same premises.



15. The certificate issued by Central Board of Excise and Customs (Form ST-2) as relating to second respondent is produced as Ex.R6 and PAN Card copy is marked as Ex.R7. It is seen from Ex.R7 PAN Card that it has been issued under the name of first respondent (Chemcrown Exports Limited Unit-III). Ex.R8 is the letter sent by ESI Corporation to the second respondent. It is seen from Ex.R9 letter that ESI Corporation has allotted Code No. 55-42384-90 for second respondent. Ex.R10 is the acknowledgement of the Government of Puducherry, Department of Industries and Commerce for the acknowledgement of the memorandum filed by the second respondent, regarding manufacturing of PU Shoe Soles and Heels and other particulars of the factory. The Government of Puducherry has issued Ex.R11 no objection certificate for change of manufacturing from PU Shoe Soles and Heels to TPR Soles, PVC Soles by the second respondent. Further the Government of Puducherry has issued Ex.R12 no objection letter to the second respondent to manufacture "Foot Wears" as additional product with certain conditions. So, the documents produced by the respondent referred above would clearly indicate that the second respondent factory has been started in a portion of the first respondent premises and 2nd respondent is doing the same business of manufacturing different types of soles for shoes and also foot wears.

16. The learned counsel for the petitioner pointed out that the Hon'ble Apex Court in the case of the Associated Cement Companies Limited (1960 AIR Pg. No. 56) has formulated the guidelines to decide whether the two establishments have functional integrality or they are separate entities by carefully considering the following aspects (1) Ownership, (2) Control and Supervision, (3) Finance, (4) Management and Employment, (5) Geographical Proximity and (6) General Unity of Purpose and Functional Integrality.

17. Ex.P1 is the closure of notice, dated 21-2-2011 issued by 1st respondent stating that the factory was closed with effect from 23-1-2011. As 1st respondent factory was ravaged due to fire accident on 8-2-2011 it decide for closure of the industry. Except the petitioner (12 workers) other labour accepted closure compensation and the petitioner insisted for re-employed in 2nd respondent. As the petitioners denied employment in second respondent factory with back wages and continuity of service they approached the Labour Department by filing representation, dated 9-3-2011 marked as Ex.P2. The respondents strongly rejected the claim of petitioners for reinstatement and expressed willingness to pay closure compensation only and the conciliation ended in failure. Ex.P3 report on Failure of Conciliation, dated 20-4-2012 was sent to the Government and consequently Ex.P4 notification was issued referring to the dispute to this court for adjudication.

18. It is an admitted fact that the second respondent was started in a portion of the premises of the first respondent factory on 11-5-2005. To substantiate the contention of the petitioner, that the second respondent is the sister concern of the first respondent, Ex.P6 and P7 master details of respondents 1 and 2 have been produced and these certificates disclosed that both the respondents 1 and 2 have been registered in the office of Registrar of Companies, Kolkata and having business address in the same premises Further B.D. Bhaiya and his sons were the proprietors of first respondent and B.D. Bhaiya is one of the directors of second respondent company, who he is having 33% share holding. The petitioners have produced some of the appointment orders of the workers as Ex.P8 (related to D. Sundaramoorthy), Ex.P9 (D. Karthikeyan), Ex.P11 (S. Ramesh) and Ex.P24 (A. Ravichandran). Employee D. Karthikeyan of 1st respondent has been transferred to another factory, namely, Dye-Chem India Limited, as per Ex.P10 Order. Ex.P12 is the pay slip of worker S. Ramesh issued by first respondent. Ex.P13 contains copies two pay slips of worker T. Ezhilarasan one related to the month of December 2008 issued by the first respondent, and another for the month of August 2007 issued by the second respondent. Ex.P14 is the copy of two pay slips relating to worker N. Velmurugan one for the month of May 2008 issued by the second respondent and another for the month of February 2009 issued by first respondent. Ex.P15 is the copy of two pay slips of worker P. Thanasekaran, one pay slip for the month of March 2008 has been issued by the second respondent and another pay slip for the month of November 2009 was issued by first respondent. Ex.P16 contains two pay slips of worker D. Sundaramoorthy and one pay slip for the month of November 2010 was issued by the second respondent and another pay slip for the month of February 2005 has been issued by the first respondent.

19. Pointing out the above referred pay slips of some of the workers, the learned counsel for the petitioner argued that workers of first respondent had been transferred/shifted frequently to the second respondent, since both the factories are under the control of same management and engaged in manufacturing of PU Shoe Soles and Heels. The interchangeable nature of workers of respondents 1 and 2 and location of these factories would disclose that the two industries are not separate entities, on the other hand there were managed, supervised and controlled by one group of management according to learned counsel for the petitioner.

20. Admittedly, there was only one trade union, namely, Chemcrown Exports and M/s. Suolificio Linea Italia Private Limited Thozhilalar Sangam (petitioner trade union) for the workers of respondents 1 and 2.

It is not in the dispute that the management of respondents 1 and 2 jointly entered Ex.P20 and Ex.P21 settlements under section 18(1) that the management of petitioner trade union. A perusal of the Ex.P20 and Ex.P21 would clearly indicate that the management of both the respondents is one and the same and the workers of both factories represented by the same trade union (petitioner) and these settlements have been arrived at.

21. Ex.P22 is the information furnished by the Government of Puducherry under the Right to Information Act stating that the name of the Chemcrown Export Limited Unit-II has been changed and it is now functioning as Suolificio Linea Italia (India) Private Limited, (second respondent). Further Ex.P23 is the licence docket of Chemcrown Exports Limited, Unit-II and which discloses that this factory has been name changed as Suolificio Linea Italia (India) Private Limited, (second respondent). Further name of the licensee Thiru B.D. Bhaiya has been changed in the name of his son Thiru Mukund Bhaiya. So, Ex.P22 and P23 would clearly demonstrate that Chemcrown Exports Limited Unit-II was closed and the factory was restarted in the name of the second respondent. The management of the companies is vested with the family Thiru B.D. Bhaiya and his sons Thiru Manoj Bhaiya and Thiru Mukund Bhaiya.

22 The proprietors of first respondent have taken major role in the formation and running of second respondent and they are now managing and supervising the second respondent concern. So, the petitioners have categorically established that the ownership of both first and second respondent is one and the same and now the second respondent is controlled, supervised by the same management. Further there was only one Trade Union (Petitioner) for the workers of both industries and the management representing both respondents jointly entered settlements under section 18(1) with petitioner Trade Union. While considering the fact of proximity both respondents 1 and 2 are located in the same premises and only after closing down of Chemcrown Exports Limited Unit-II it was restarted in the name of second respondent and both the factories are engaged in manufacturing the same products, namely, different types of soles for shoes and foot wears. The workers of the first respondent factory were transferred to second respondent factory as per requirements and this fact is established by Ex.P13, Ex.P14, Ex.P15 and Ex.P16 pay slip copies of some workers. So, a careful analysis and perusal of the records available would clearly indicate that there exists functional integrality between the first and second respondent and both the factories are under the control and supervision of the same management and engaged in production of the same materials.

23. The petitioners, namely, 12 workers served for many years in the first respondent factory and they acquired much experience, in fact the second respondent is ready to engage the petitioners but only as a fresh entrants. But considering the factual position and the service of the workers in the light functional integrality of both the factories, namely, respondents 1 and 2, I consider that the petitioners have to be absorbed in the second respondent factory with half back-wages and with continuity of service and other attendant benefits. Accordingly, I answer that the first respondent (closed down industry) and the second respondent (running industry) have functional integrality as per the guidelines of the Hon'ble Supreme Court as observed in the case of Associated Cement Companies Limited. So, the petitioners who have laid-off due to the closure of the first respondent is entitled for reinstatement in the second respondent factory and accordingly I answer this point.

24. In the result, this industrial disputes is allowed and the second respondent is directed to engage/reinstate the petitioners, namely, the following 12 workers (1) A. Ravichandran, (2) K. Kaliyamoorthy, (3) A. Subramanian, (4) A. Lakshmanan, (5) E. Selvam, (6) T. Srinivasan, (7) K. Ezhumalai, (8) S. Ramesh, (9) A. Arumaiselvam, (10) R. Murugan, (11) P. Sekar, (12) S. Magesh with 50% back-wages and with continuity of service and other attendant benefits within a period of one month from the date of this order.

Dictated to the Stenographer transcribed by her, corrected and pronounced by me in open court on this the 24th day of February, 2016.

**N. SIVAKUMAR,**  
Presiding Officer, Labour Court,  
Pondicherry.

*List of petitioner's witness:*

PW.1— 18-8-2014 — A. Ravichandran

*List of respondent's witnesses:*

RW.1— 17-2-2015 — D. Vijayarajan

RW 2— 17-3-2015 — B. Balasubramanian

*List of petitioner's exhibits:*

Ex.P1 — Copy of the notice of closure, dated 21-2-2011. (Original)

Ex.P2 — Copy of the letter in Sangam raised industrial dispute, dated 21-2-2009. (Photocopy)

- Ex.P3 — Copy of the conciliation failure report, dated 20-4-2012.(Original)
- Ex.P4 — Copy of the reference notification by Government of Puducherry, dated 13-7-2012. (Photocopy)
- Ex.P5 — Copy of the Certificate of registration of trade union, dated 26-3-2003. (Photocopy)
- Ex.P6 — Copy of the company master details for 1st respondent, dated 20-11-2011. (Original)
- Ex.P7 — Copy of the company master details for 2nd respondent, dated 20-11-2011. (Original)
- Ex.P8 — Copy of the Sundaramoorthy Appointment Order in Chemcrown Exports Limited, dated 1-7-1998. (Photocopy)
- Ex.P9 — Copy of the Karthikeyan Appointment Order in Chemcrown (India) Limited, dated 1-8-1996. (Original)
- Ex.P10— Copy of the Karthikeyan Transfer Order in Chemcrown (India) Limited, to Dye chem (India) Limited, dated 30-3-2000. (Original)
- Ex.P11— Copy of the Ramesh Appointment Order in Chemcrown (India) Limited, dated 2-5-1997. (Photocopy)
- Ex.P12— Copy of the S. Ramesh salary bill in Chemcrown Exports Limited, dated May 2010 (Photocopy)
- Ex.P13— Copy of the T. Ezyilarasan salary bill in 2nd respondent and T. Ezhilarasan Salary Bills in 1st respondent, dated August 2007 and December 2008. (Photocopy)
- Ex.P14— Copy of the N. Velmurugan salary bill in 2nd respondent and N. Velmurugan salary bills in 1st respondent, May 2008 and February 2009. (Photocopy)
- Ex.P15— Copy of the P. Thanasekar salary bill in 2nd respondent and P. Thanasekar salary bills in 1st respondent, March 2008 and November 2009. (Photocopy)
- Ex.P16— Copy of the D. Sundaramoorthy salary bills in 2nd respondent and D. Sundaramoorthy salary bills in 1st respondent, February 2005 and November 2010. (Photocopy)
- Ex.P17— Copy of the letter issued by the petitioner sangam to the 1st respondent management and received by 2nd respondent management, dated 25-9-2009. (Photocopy)

- Ex.P18— Copy of the general letter issued by the petitioner sangam to the 1st and 2nd respondent management and received by 2nd respondent management, dated 4-10-2010. (Photocopy)
- Ex.P19— Copy of the general letter issued by the petitioner sangam to the 1st and 2nd Respondent management and received by 2nd respondent management, dated 14-6-2010. (Photocopy)
- Ex.P20— Copy of the memoranduom of agreement between M/s. Chemcrown Exports Limited and Chemcrown Exports Workers Union under section 18(1) of Industrial Disputes Act, 1947, dated 15-2-2007. (Photocopy)
- Ex.P21— Copy of the memorandum of agreement between M/s. Chemcrown Exports Limited and Chemcrown Exports Workers Union under section 18(1) of Industrial Disputes Act, 1947, dated 28-4-2010. (Original)
- Ex.P22— Copy of the Reply Letter issued by the Labour Department Puducherry under the Right to Information Act, dated 14-9-2012. (Original)
- Ex.P23— Copy of the Licence Docket in M/s. Chemcrown Exports Limited, Unit-II, with the recent name change of M/s. Suolificio Linea Italia Private Limited, dated 14-9-2012. (Photocopy)
- Ex.P24— Copy of the Appointment Order in A. Ravichandran in first petitioner, dated 21-7-1994. (Photocopy)

*List of respondents exhibits:*

- Ex.R1 — Certified copy of the authorisation letter, dated 4-11-2014 (True copy)
- Ex.R2 — Copy of the Value Added tax registration certificate, dated 28-9-2007. (Photocopy)
- Ex.R3 — Copy of the cetificate of registration of commercial tax, dated 14-12-2005. (Photocopy)
- Ex.R4 — Copy of the memorandum of articles of association, dated 11-5-2005. (Photocopy)
- Ex.R5 — Copy of the certificate of registration issued by the Central Board of Excise and Custom, dated 9-9-2005. (Photocopy)
- Ex.R6 — Copy of the certificate (Form ST-2) issued by the Central Board of Excise and Custom, dated 17-1-2005. (Photocopy)

- Ex.R7 — Copy of the PAN Card (Photocopy)
- Ex.R8 — Copy of the letter of Employees State Insurance Corporation, dated 29-1-2005. (Photocopy)
- Ex.R9 — Copy of the certificate of Registration of factory issued by the Employees' State Insurance Corporation, dated 7-3-2006. (Photocopy)
- Ex.R10— Copy of the Acknowledgement issued by Department of Industries and Commerce, dated 8-10-2014. (Photocopy)
- Ex.R11— Copy of the letter of Department of Industries and Commerce, dated 2-8-2011. (Photocopy)
- Ex.R12— Copy of the letter of Department of Science Technology and Environment, Puducherry, Pollution Control Committee, dated 27-8-2014. (Photocopy)

**N. SIVAKUMAR,**  
Presiding Officer, Labour Court,  
Pondicherry.

**GOVERNMENT OF PUDUCHERRY**  
**LABOUR DEPARTMENT**

(G.O. Rt. No. 22/Lab./AIL/J/2016, dated 19th April 2016)

**NOTIFICATION**

Whereas, an Award in I.D (L) No. 10/2013, dated 29-1-2016 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Larsen & Toubro Limited, Puducherry and its worker Thiruvalar D. Ramesh over non-employment has been received.

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by the Secretary to Government (Labour), that the said award shall be published in the Official Gazette, Puducherry.

(By order)

**E. VALLAVAN,**  
Commissioner of Labour-cum-  
Additional Secretary to Government (Labour).

**BEFORE THE LABOUR COURT AT PUDUCHERRY**

*Present :* Thiru N. SIVAKUMAR, B.A., M.L.,  
Presiding Officer, Labour Court.

*Friday, the 29th day of January 2016*

**I.D. (L) No. 10/2013**

D. Ramesh,  
S/o. Dhandapani,  
aged about 37 years,  
No. 10, Nadu Street,  
Wisemen Higher Secondary  
School Opposite,  
Velrampet, Puducherry. . . Petitioner

*Versus*

The General Manager,  
Larsen & Toubro Limited,  
Pondicherry Works,  
Mylam Road, Sedherapet,  
Puducherry. . . Respondent.

This industrial dispute coming on 18-1-2016 for final hearing before me in the presence of Thiruvalargal P.R. Thiruneelakandan and A. Mithun Chakkaravarthy, Counsel for the petitioner, Thiruvalargal M. Vaikunth, R. Vikneshraj and R. Elamparuthi, Counsel for the respondent, upon hearing both sides, perusing the case records and having stood over till this day for consideration, this court delivered the following:

**AWARD**

This industrial dispute has been referred as per the G.O. Rt. No. 15/AIL/Lab./J/2013, dated 15-2-2013 for adjudicating the following:-

(1) Whether the dispute raised by petitioner Thiru D. Ramesh against the Management of M/s. Larsen & Toubro Limited, Puducherry over his non-employment caused due to the termination order, dated 22-11-2011 issued by the management is justified or not?

(2) If justified, what relief the petitioner is entitled to?

(3) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The facts giving rise to this industrial dispute as stood exposed from the claim petition runs thus:-

2(i) The petitioner, namely, D. Ramesh was appointed in the respondent factory, namely, Larsen & Toubro Limited, on 21-11-1995 as a Turner (workman-skilled) and after medical examination he

was fit for appointment. The petitioner was given an appointment order, dated 8-7-1996 designating him as Trainee and along with the petitioner 30 workmen were also appointed. While so, the petitioner and 4 other workers, namely, D. Kulanjinathan, M. Boothanathan, K. Selvam and V. Ramalingam, Murugavel, were denied employment by the respondent's act of victimisation and unfair Labour practice. So the workers, namely, M. Boothanathan, K. Selvam and V. Ramalingam challenging their illegal termination raised an industrial dispute in ID(L) No. 54 of 2001 before the Labour Court, Puducherry. Likewise the petitioner and the workman namely D. Kulanjinathan raised another industrial dispute in ID(L) No. 59 of 2001. The Labour Court, Puducherry, *vide* its order, dated 31-1-2003 passed an award holding that the termination of the petitioner and the other workers are illegal and directed the respondent herein to reinstate the petitioner and the other workers with effect from 21-8-1998 with half back wages and with continuity of service and other attendant benefits.

2(ii) Against the award passed by the Labour Court the respondent preferred Writ Petitions WP No.11475 and 11476 of 2003 and the same were dismissed by the Hon'ble High Court *vide* its common order, dated 8-2-2011 against which the respondent preferred Writ Appeals WA No. 577 and 578 of 2011 and the same were also dismissed by the Division Bench *vide* its common order, dated 7-4-2011 and thereby the award of the Labour Court made in ID Nos. 54 and 59 of 2001 reached finality since no SLP was preferred by the respondent as against the said order of Division Bench. Even thereafter the respondent did not provide employment to the petitioner. So the petitioner made representations, dated 9-5-2011, 9-6-2011 and 14-6-2011 to the Deputy Commissioner of Labour-cum-Conciliation Officer (DLC). On receipt of the said representations the DLC had issued conciliation notice, dated 5-7-2011 to the respondent, during the conciliation meeting before the DLC on 25-7-2011 the petitioner and the other terminated workers were given a fresh appointment orders as probationers.

2(iii) The petitioner and other terminated workers objected fresh appointment order of probation and complained the same before the conciliation officer and then the respondent issued a reinstatement order, dated 6-8-2011 implementing the award of the Labour Court to all the said workers except the petitioner. As the petitioner was a member in the Trade Union namely L&T Pattali Thozhir Sangam, he was denied implementation of the award of the

Labour Court and he was treated discriminately. The respondent with an ulterior motive to terminate service of the petitioner again issued fresh appointment order as probationer. So the petitioner objected the probation order and sent a legal notice, dated 26-7-2011 to the respondent. On receipt of the said legal notice the respondent issued reply, dated 27-7-2011 stating that the other terminated workers had accepted the terms and conditions of the reinstatement order.

2(iv) So the petitioner refuting the averments made in the said letter sent a legal notice, dated 3-8-2011. At the time of initial appointment in the year 1995 the petitioner was medically examined and found that he was physically fit for appointment and accordingly appointment order was issued. Despite that, while reinstating the petitioner as per the award of the Labour Court, he was given appointment order as a Probationer and he was directed to undergo medical test for providing employment.

2(v) On 27-7-2011 the petitioner was sent to Pondicherry Institute of Medical Science for medical test. The doctor who had examined the petitioner issued a medical certificate stating that the petitioner is medically fit for employment. Not satisfied with the medical test report the respondent once again directed the petitioner to undergo medical examination at Padmavathi Hospital at Puducherry, wherein the doctor who examined the petitioner had issued a certificate by mentioning that the petitioner is suffering from "Rheumatic Heart Disease", but he has no 'Cardiac Symptom' and he is fit to do sedentary type of work and advised to avoid heavy work. Despite that the respondent denied employment to the petitioner.

2(vi) The petitioner sent a letter, dated 10-8-2011 to the respondent stating that he is physically fit to do all work to be assigned by the management and even if he suffers from any health problem he will get treatment from the ESI Hospital. In spite of such request, the respondent denied employment to the petitioner and directed him on 24-9-2011 to get fitness certificate from the Apollo Hospital, Chennai. Since the respondent was searching reasons to deny employment to the petitioner by directing to undergo medical tests one after another, the petitioner sent a letter, dated 3-10-2011 stating that he is fit to do all works assigned by the respondent and requested the respondent to send him common medical test provided under the ESI Hospital, but the respondent did not send the petitioner to the ESI Hospital.

2(vii) The respondent had not allotted any duty to the petitioner. So he sent complaints to Labour Department and several representations to the respondent on various dates. Even after such representation the respondent did not allot routine work to the petitioner. Curiously on 22.11.2011 the service of the petitioner was terminated on the ground of continued ill health and as there is no sedentary type of work in the respondent factory to retain him in service.

2(viii) The termination of petitioner's service is nothing but an act of continued victimisation and unfair labour practice by the respondent. The petitioner has not suffering with any continuous ill-health. The respondent factory has various departments such as Fabrication, Quality Control, Galvencing, Store, Reception, Despatch, Furnace Operator, Paint Shop, Grain Operator, etc., wherein sedentary type of works available.

2(ix) The petitioner requested the respondent to issue certificate of re-employment in form-37 so as to get medical fitness certificate from Apollo Hospital, Chennai through ESI Hospital. But his request was denied and he was not given re-employment certificate.

2(x) The petitioner made several complaints to the Labour authorities for breach and violation of award, unfair labour practice of the respondent. Thereafter the petitioner filed the Writ Petition WP No. 5290 of 2012, wherein the Hon'ble High Court directed the petitioner to approach the Conciliation Officer and raise a dispute over his denial of employment and in turn the conciliation officer and the Government directed to refer the petitioner's dispute before this court. So the petitioner raised an industrial dispute over his illegal termination of service which is referred to this court under G.O. Rt. No. 15/AIL/Lab./J/2013 and taken on file as ID No. 10 of 2013. The termination of the petitioner on 22-11-2011 on the ground of continued ill-health is illegal and liable to be set aside on the following among other grounds:-

(i) Termination of the petitioner service is arbitrary, illegal and gross violation of principle of natural justice and amongst of victimisation and unfair labour practice.

(ii) The respondent initially failed to implement the award of the Labour Court, dated 31-1-2003 made in ID(L) No. 59 of 2001 without any basis. The respondent has denied employment to the respondent on the false ground of continued ill-health.

(iii) The service of the petitioner was terminated on 21-8-1998 by an act of victimization and unfair labour practice. Since the labour court set-aside the earlier termination and ordered for reinstatement of the petitioner, now the respondent in order to deny employment to the petitioner once again terminated his service as if he is suffering from continuous ill health.

(iv) The doctors who examined the petitioner had given certificate that the petitioner is fit for employment. Despite such medical records the respondent has terminated petitioner's service by falsely alleging that he was suffering from continuous ill-health.

(v) The petitioner has not been examined by the medical board under the ESI Act and he was not declared as he has been suffering continuous ill-health. In the absence of any material to show that the petitioner is suffering from continued ill-health and unfit for employment, the termination of the petitioner is highly illegal and arbitrary.

(vi) The rheumatic heart disease cannot be said as continuous ill-health and there is no material or expert opinion to say that if a person suffering from such a disease cannot be recovered till his retirement.

(vii) The petitioner has not been declared, that he is incapacitated to do work due to his illness. There are sedentary type of work available in various departments of the respondent factory. The doctors have given second opinion that the petitioner can do sedentary type of work but the petitioner's service has been illegally terminated by the respondent against to the medical advice.

(viii) The petitioner can be accommodated in any sedentary type of work in other departments. The termination of the petitioner's service is violation of Section 25-F of the Industrial dispute Act, which is illegal.

(ix) The petitioner is the sole bread winner of the family and due to his termination of service his family is facing untold hardship, since he has not been gainfully employed in any establishment in anywhere. The last drawn salary of the petitioner is ₹ 14,582.

So, this Hon'ble High Court may be pleased to pass an award holding that the termination of service of the petitioner by the respondent with effect from 22-11-2011 is illegal and consequently direct the respondent to reinstate him with effect from 22-11-2011 with continuity of service, backwages, and all other attendant benefits and pass such suitable order.

3. The facts set out in the counter filed by the respondent management are stated as follows:

3(i) The petitioner along with four others had raised industrial disputes against the termination of services from the respondent from 21-8-1998. This disputes were referred to this Hon'ble High Court and numbered as I.D. No. 54 of 2001 and I.D. No. 59 of 2001. At the conclusion of the trial, awards were passed on 31-1-2003, where the petitioner was one of the parties in I.D. No. 59 of 2001. The awards directed the respondent to reinstate the petitioner with effect from 21-8-1998 with half back wages and with continuity of service and other attendant benefits as applicable to them as per Labour laws.

3(ii) The respondent management had filed two separate writ petitions (W.P. No. 11475 and 11476 of 2003) before the Hon'ble High Court, Madras challenging the awards passed by the Labour Court in I.D. No. 54 of 2001 and I.D. No. 59 of 2001. The Hon'ble High Court, Madras by order, dated 8-2-2011 was pleased to dismiss both the writ petitions. Thereafter the respondent management preferred Writ Appeals W.A. Nos. 577 and 578 of 2011 before the Division Bench of Hon'ble High Court, The Hon'ble first bench by order, dated 7-4-2011 was pleased to dismiss both the Write Appeals.

3(iii) Pursuant to the abovesaid orders, the respondent management by letter, dated 25-7-2011 issued orders of reinstatement to all the workmen covered by both the awards directing them to report for duty on 27-7-2011.

3(iv) Although the terminated workers covered by the awards were entitled for the reinstatement only as casual workers, based on the job requirement, the respondent management offered to reinstate them in the permanent services and accordingly issued orders of reinstatement. Hence the petitioner was also reinstated to the permanent services and he was also sent for medical examination along with the four other workmen who were similarly placed.

3(v) Though the petitioner was directed to report for duty on 27-7-2011, the continuity of service will be considered for all practical purposes with effect from 21-8-1998. The petitioner accepted the offer/order of reinstatement and reported for employment on 27-7-2011 and also received the backwages on the same day and issued a receipt, dated 28-7-2011 for the same.

3(vi) As per the terms of the order of reinstatement, the petitioner was referred to the Company's Medical Officer. The Medical Officer who carried out medical examination of the petitioner of

the view that the petitioner was found to be suffering from serious heart ailment and needed to be examined by an expert cardiologist. Accordingly, the petitioner was referred to an expert at AG Padmavathi Hospital, Puducherry. As per the opinion of the expert, the petitioner was found to suffer from "Rheumatic Heart Disease". The expert has also opined that the petitioner is fit to do sedentary type of work and advised to avoid heavy work.

3(vii) The petitioner was working as a Turner. The duties of "Turner" required considerable physical activities and hard work. So taking into account the opinion of the expert and keeping with mind the duties required to be performed by the petitioner as a Turner the respondent management advised the petitioner to undergo further examination at Apollo Hospitals, Chennai *vide* letter, dated 24-9-2011. But the petitioner by his letter, dated 3-10-2011 refused to appear for any further medical examination. In view of the above, the respondent management by letter, dated 22-11-2011 intimated the petitioner that in view of his health condition and keeping in mind the nature of duties required to be performed him, which is strenuous and demand physical exertion and in view of the fact that there is no sedentary type of work available in the factory, the management has no other option except to discharge the petitioner from the services. The petitioner had been paid salary and other allowances full and final settlement of all dues, including notice pay, etc., by means of a cheque. However the petitioner has not encashed the cheque issued to him.

3(viii) The petitioner has filed a complaint before the Labour Officer (Conciliation), Puducherry under Section 25-T of the Industrial Disputes Act alleging non-compliance of the award, dated 31-1-2003 in this Hon'ble Court. In fact respondent company has implemented the award of this court in letter and spirit. Therefore there was no question of any unfair labour practice on the part of the respondent company. The petitioner thereafter filed a Writ Petition No. 5290 of 2012 before the Hon'ble High Court, Madras alleging unfair labour practice and seeking prosecution of the respondent. The Hon'ble High Court, Madras has disposed the writ petition with direction to refer the industrial disputes relating to non-payment of the petitioner for adjudication to the Labour Court, Puducherry and further direction to this court to dispose of the industrial dispute as expeditiously as possible.

3(ix) The petitioner had worked only as a contract labourer through a contractor that too at intermittent intervals. During 1995 when the petitioner was taken as a casual worker, he was not subjected to any

medical examination as there was no practice of medical check for a casual labourer. The respondent had no knowledge of the medical fitness of the petitioner, so he was sent for medical examination. All the workers covered under the two awards made in ID No. 54 and 59 of 2001, including the petitioner were offered employment on and from 27-7-2011 making it clear that their seniority for all the purposes would be reckoned from 21-8-1998.

3(x) The averment that there are sedentary type of work available in the respondent factory in various departments such as Fabrication, Quality Control, etc., is not correct as there is no vacancy available in other departments referred to by the petitioner suitable to his qualification and experience. In any case, it is submitted that the nature of job in all these areas requires the same physical/mental exertion. Therefore the petitioner may not be suited in view of the expert's opinion on the health condition. Further, it is submitted that it is within the managerial/administrative powers to utilise the services of employees where they are required, depending upon the requirements of the company and exigencies of work.

3(xi) There is no question of violation of Section 25-F of the I.D. Act as the petitioner was discharged pursuant to his being found to be suffering from rheumatic heart disease and the petitioner also refused to appear for any further medical examination. The petitioner did not make use of the offer of the respondent management and therefore the respondent had no other option except to discharge the petitioner on the ground of ill-health. Hence the claim of the petitioner is not legally sustainable and the reference has to be dismissed.

4. During the course of enquiry, petitioner Thiru D. Ramesh has been testified as PW.1 and Ex.P1 to P56 were marked. On the side of the respondent Thiru K. Shanmugam, Engineering Works, Larsen and Toubro Limited, Puducherry works has been examined as RW.1 and Ex.R1 to R11 have been marked through PW1 during his cross-examination.

#### 5. The points for consideration:

(1) Whether the petitioner Thiruvalar D. Ramesh was duly reinstated by the respondent in compliance with the award passed in ID(L) No. 59 of 2001, dated 31-1-2003 confirmed in Writ Petition WP No. 11476 of 2003 and in Writ Appeal WA No. 578 of 2011?

(2) Whether Petitioner D. Ramesh is physically not fit to continue his service as a Turner or to do any sedentary nature of work in the respondent/management?

(3) Whether the denial of employment to the petitioner on medical grounds and termination of his service with effect from 22-11-2011 by the respondent amount to victimisation and unfair labour practice?

#### 6. On the points No. 1 and 2:

The respondent factory, namely, Larsen and Toubro Limited is located in Puducherry. The petitioner, namely, D. Ramesh was appointed as a Trainee worker in respondent management along with 30 other workers. Later the order of appointment as Trainee was issued and it is produced as Ex.P1 and the petitioner admitting the terms and conditions of Ex.P1 affixed his signature thereon. While the petitioner was working he became a member of the ESI Corporation and contributions were deducted from his salary and the Xerox copy of the ESI Card is marked as Ex.P2. The petitioner and five other workers were illegally terminated from service on 20-8-1998 without any notice or enquiry. So all the five workers including the petitioner approached the Labour Department and raised industrial disputes. The Conciliation was not fruitful and the failure report on conciliation was sent to Government and the abovesaid reference was taken on file as ID No. 59/2001 for disposal and consequently G.O. Rt. No. 179/2001/AIL/L, dated 3-10-2001 was issued for adjudicating the following:-

(i) Whether the non-employment of Thiruvalagal D. Ramesh and D. Kulanjinathan by the management of M/s. Larsen & Toubro Limited, Puducherry is justified or not?

(ii) To what relief/benefits the said workmen are entitled to?

(iii) To compute the relief, if any, awarded in terms of money if it can be so computed?

7. On considering the averments of claim statement, counter and on appreciating oral and documentary evidence adduced on either side the Labour court passed award, dated 31-1-2003 directing the respondent/management to reinstate the petitioner with effect from 21-8-1998 with half back wages and with continuity of service and other attendant benefits as applicable to them as per Labour laws. The copy of the order made in I.D. No. 59/2001 is marked as Ex.P3.

8. The respondent management felt aggrieved by the award of the Labour Court passed in ID No. 59/2001 preferred writ petition WP No. 11476 of 2003 challenging validity of the said award. Finally the said writ petition was dismissed on 8-2-2011 and thereby the award was confirmed and copy of the order is produced as Ex.P4. Thereafter the respondent management preferred Writ Appeal in WA No. 578 of 2011 and it was also dismissed on 7-4-2011 as seen from Ex.P5 order copy.



9. Even after dismissal of the said Writ Appeal the respondent management did not implement the award passed in ID No. 59/2001, so the petitioner sent a complaint under section 29 of Industrial Disputes Act to the Deputy Labour Commissioner-cum-Conciliation Officer and the Conciliation officer issued Ex.P6 notice, dated 5-7-2011 to the respondent management for prosecution under Section 29 of the ID Act. The copy of the proceedings of the Conciliation Officer is marked as Ex.P7. The management sent Ex.P8 letter, dated 25-7-2011 directing the petitioner to report for employment on 27-7-2011.

10. The respondent management has issued Ex.P9 employment order titled as "employment on probation" with effect from 27-7-2011 with some terms and conditions Clause 3 of the Ex.P9 order reads that the period of probation will be for six months. However the management reserves to extend this period, if necessary. If at the end of the probation period you are found suitable, your appointment will be confirmed by us in writing, subject to even being physically found fit by our company's Doctor. Clause 8 says during the first three months of the period of probation, either will be entitled to terminate the contract of employment by giving 24 hours notice and thereafter during the remaining period of probation by giving 14 days notice in writing to the other without assigning any reason. After confirmation in service, either party will be entitled to terminate the contract of employment by giving one month's notice in writing or a month's salary *in lieu of* thereof. A perusal of the terms and conditions found in Ex.P9 would clearly indicate that it is a fresh order of appointment of the petitioner in respondent's management only as a 'Probationer.'

11. The petitioner through his advocate had sent Ex.P10 reply by Fax on 26-7-2011 acknowledging the appointment order but raised objection stating that the appointment order is not fully in compliance with the directions given in the award. The management has sent Ex.P11 reply by Fax, dated 27-7-2011 stating that other workmen have accepted the offer of employment and the terms and conditions wholeheartedly, so the petitioner should also accept Ex.P9 employment order. Further the respondent management has issued Ex.P12 letter, dated 27-7-2011 asking the petitioner to undergo pre-medical checkup at Pondicherry Institute of Medical Sciences, Puducherry and report to the above hospital on 28-7-2011. Ex.P13 is the medical report pertaining to the petitioner, wherein, the doctor has given impression as "Mild MS with Moderate MR" but given opinion as "Mr. Ramesh (Petitioner) is medically fit for employment."

12. Again the petitioner was referred to A.G. Padmavathi Hospital for examination by Senior Cardiologist Dr. G. Elangovan and the medical certificate, dated 29-7-2011 issued by him is marked along with letter Ex.P14 (Ex.R5). It is mentioned in Ex.P14 that "On examination the petitioner was found to have rheumatic heart disease, mitral stenosis moderately severe, mitral regurgitation mild, aortic regurgitation mild, in sinus rhythm there was no clot he has no cardiac symptoms and he is fit to do sedentary type of work and advised to avoid heavy work." Based on the abovesaid medical certificate the respondent management sent Ex.P14 letter, dated 1-8-2011 to the petitioner stating that in the light of his continued ill-health, namely, rheumatic heart disease, etc., it will not be possible for him to continue in service any longer. Such continuation of service will be a greater risk to the petitioner and his fellow employees and there was no sedentary posts available in the factory, where he can be accommodated. In these circumstances, the respondent management has proposed to discharge the petitioner from service on grounds of continued ill-health and copy of the medical certificate has been enclosed with this letter.

13. On receiving Ex.P14 letter intimating proposal of discharge of service the petitioner sent Ex.P15 reply by fax, dated 3-8-2011, to the respondent management explaining the direction of the award and the denial of employment on the part of the respondent management. One of the workmen Thiruvallur D. Kulanjinathan who took part in the legal battle along with the petitioner has accepted the work order and copy of the same is marked as Ex.P16 and it is pertinent to note down that the said D. Kulanjinathan has been reinstated as a 'workman' with basic wage of ₹ 1265 per month, whereas the petitioner was not reinstated as a workman but a fresh order of employment on probation (Ex.P9) was issued whereunder the petitioner was proposed to be appointed as a 'Probationer' with consolidated wages on certain terms and conditions and he has to undergo training for a specific period. So there is discrimination on the part of the respondent while issuing reinstatement orders to the petitioner and other terminated workers.

14. The petitioner has sent a (Ex.P.17) a letter, dated 10-8-2011 narrating the sequence of events right from the beginning and the intentional denial of employment by the management. Along with this letter medical report Ex.P18 of the petitioner issued by Dr. S. Anandaraja, International Cardiologist was enclosed. It is specified in this medical report that the petitioner though suffering from RHD "Mild MS with Moderate MR" and AR, he is advised to carry on with his regular activities and undergo yearly evaluation of

his heart problem. Not satisfying with the medical report the management again sent Ex.P19 letter, dated 12-8-2011 and sought for explanation of the petitioner in respect of his heart disease mentioned in Ex.P13 medical certificate issued by PIMS. The petitioner has sent Ex.P20 reply, dated 18-8-2011 stating that he has already submitted his explanations regarding medical fitness under Ex.P17 letter.

15. The petitioner has submitted Ex.P22 representation, dated 26-8-2011 to the Commissioner of Labour regarding his denial of employment by management on medical grounds. Again the petitioner has sent Ex.P23 representation, dated 14-9-2011 requesting the Commissioner of Labour to enforce the award passed in ID(L) No. 59/2001. The Deputy Commissioner of Labour has issued Ex.P24 notice, dated 19-9-2011 to the trade union, namely, L&T Pattali Thozhir Sangam and also the respondent directing the respondent to give explanation otherwise to be prosecuted under Section 29 of the ID Act. Further the Chief Inspector of Factories sent Ex.P26 memo to the respondent for non-issuance of pay slip, uniform, confirmation of work and allocation to the petitioner.

16. Thereafter the respondent issued Ex.P27 letter, dated 24-9-2011 directing the petitioner for further medical examination by an Expert Cardiologist at Apollo Hospitals, Chennai. The petitioner sent reply stating that already he had been examined by Experts/Specialists in two medical institutions and no more medical tests required. He has mentioned that if he suffers from any heart ailment he would continue treatment through ESI Hospital. Further the petitioner has made several representations to the Labour Department stating that he has not been given employment and discriminated from other workers.

17. The learned counsel for the petitioner submitted that petitioner was ready to undergo medical examination in Apollo Hospital for which he sought for Form-37 from the management but it was denied. The petitioner has produced Ex.P2 ESI identity card and Ex.P32, P33, P34 and P35 ESI Hospital prescriptions to show that he went to ESI Hospital for medical examination.

18. The respondent has sent Ex.P36 letter, dated 22-11-2011 stating that petitioners continued health condition, that relates to rheumatic heart disease does not enable the petitioner to continue service any longer so the management has decided to discharge the petitioner from service forthwith for his continued ill-health. The discharge of the petitioner from service has taken effect from 22-11-2011 and a cheque for a sum of ₹ 96,463 has been enclosed towards the full and

final settlement including one month's wages *in lieu of* notice.

19. The petitioner has sent Ex.P37 letter, dated 23-11-2011 to the respondent management stating that he was not given due opportunity and sufficient time to go to Apollo Hospital for medical tests. It is further mentioned that if Form-37 is issued to the petitioner, he will be ready to attend for medical examination at Apollo Hospital, Chennai. The petitioner as an employee covered under ESI Act, he could get necessary medical treatment from ESI Hospital. The petitioner has sent Ex.P38, P40, P41 letters to the respondent management explaining his health condition and the ordeals faced by me due to denial of employment. Thereafter the petitioner has addressed to the Labour Commissioner through Ex.P42 letter raising an industrial dispute in respect of his denial of employment by the respondent. Further the petitioner has sent several complaints alleging certain violations and illegal activities of the respondent management to Labour Department. But no effective steps were taken by the Labour Department, Puducherry, for reinstatement of the petitioner. So the petitioner approached the Hon'ble High Court by filing Writ Petition WP No. 5290 of 2012 seeking direction to the Union territory of Puducherry to prosecute the respondent management for failure of the implementation of award in ID(L) No. 59/2001. The said Writ Petition was disposed on 8-2-2011 with a direction to the Union territory of Puducherry to refer the industrial dispute relating to non-employment of petitioner caused due to termination order, dated 22-11-2011 (Ex.P36) issued by the management for adjudication to Labour Court and further direction to the Labour Court to dispose of the industrial dispute as expeditiously as possible. The copy of the order in the abovesaid Writ Petition is produced as Ex.P51 and in pursuance of the direction the petitioner raised industrial dispute but the conciliation was failed and the reference was made to this court for disposal.

20. It is true that the petitioner was found to be a workman of the respondent management and the respondent management was directed to reinstate him with effect from 21-8-1998, as per Ex.P3 award with half back wages and with continuity of service and other attendant benefits.

21. The respondent management without complying the direction of the award, preferred Ex.P4 Writ Petition which was dismissed and the Writ Appeal Ex.P5 was also dismissed, after dismissal of Writ Petition and Writ Appeal the award passed in ID No. 59 of 2001 reached finality, since no SLP was preferred. The learned counsel for the petitioner vehemently argued that

without reinstating the petitioner the respondent management adopted several tactics and denied employment of the petitioner. The petitioner ought to have been reinstated as a workman like other terminated workers, but the petitioner has been isolated and he has been issued with Ex.P9 employment order on probation. It is pertinent to note that in Ex.P3 award nothing has been mentioned that the petitioner should be reinstated as a Probationer/Trainee. Contrary to the direction given in Ex.P3 award confirmed in Writ Petition and Writ Appeal, the management has chosen a third decree method to victimise the petitioner and consequently issued Ex.P9 for appointing the petitioner on probation. The terms and conditions found Ex.P9 clearly demonstrate that the petitioner was selected as a fresh Trainee/Probationer.

22. After issuing Ex.P9 appointment order, the petitioner was directed to appear for routine medical checkup. Ex.P13 is the first medical report issued by PIMS wherein the doctor has given opinion that the petitioner is medically fit for employment, though he was suffering with "Mild MS with Moderate MR". Not satisfying with the medical report, the management directed the petitioner to undergo medical examination by an Expert, namely, Dr. G. Elangovan and on thorough examination he issued the medical certificate produced along with Ex.P14 letter. It is specifically mentioned in the medical certificate that the petitioner "has no cardiac symptoms" and he is fit to do sedentary type of work and advised to avoid heavy work". The respondent management was not satisfied even with the second report also and the petitioner was not reinstated. The petitioner made several attempts and preferred many representations to the management to get employment. Further he sent several complaints in this regard to the concerned authorities. But the respondent management without perusing the representation of the petitioner, once again directed him to appear for medical examination by Expert Doctor at Apollo Hospital, Chennai.

23. It is an admitted fact that the petitioner as an employee covered under ESI Scheme and he can very well undergo treatment for his ailments in the ESI Hospital. The petitioner has also sent specific representation stating that he is fit for appointment and ready to undergo examination by a Medical Board to be constituted by ESI. But the management without sending the petitioner for Examination by Medical Board of ESI, has directed him to be examined by a private hospital. The medical reports Ex.P13, Ex.P14 and Ex.P18 would clearly indicate that the petitioner is not suffering from any continued ill-health nor Cardiac Symptoms but he is suffering from "Mild MS with Moderate MR".

24. Admittedly, the petitioner was appointed in the year 1995 as a Probationer and on completion of training he continued service as a Turner, since he had completed ITI course. So he is a qualified Turner and he was doing the work of Turner and Machine Operator. In Ex.P13 medical report nothing explained about his cardiac disease and the doctor has given opinion that he was medically fit for employment. Only in Ex.P14 (Ex.R5) it is mentioned that he has no cardiac symptoms but found to have rheumatic heart disease and advised that he is fit to do sedentary type of work and to avoid heavy work. The respondent management has firmly taken a decision of not reinstating the petitioner and asked him to undergo medical examinations one after another. The attitude of the respondent management is a deliberate denial of employment to the petitioner since he has been driven from pillar to post.

25. The respondent is under legal obligation to reinstate the petitioner in terms of Ex.P3 award. Having lost the legal battle the respondent management has chosen to adopt third decree methods to victimise the petitioner and he has been directed to undergo several medical tests. It is clear from the medical records that the petitioner has no cardiac symptoms and he can be employed in sedentary type of work. But the respondent management has not chosen to absorb the petitioner as an employee and abruptly sent Ex.P36 letter discharging his service.

26. The petitioner has undergone medical tests for two times as insisted by the respondent management in Ex.P13 and P14 medical certificate/report pertaining to the petitioner nothing has been disclosed that he is suffering from continued ill-health or he is unfit to do any work. Even in the Ex.P14, it is specifically mentioned that the petitioner is advised to do sedentary nature of work and avoid heavy work. Intentionally, the respondent management has not chosen to send the petitioner to the Medical Board to be constituted by ESI for further examination, since all the required tests have already been conducted on two occasions as evident from Ex.P13 and P14 according to learned counsel for petitioner. The respondent has not stated any valid reason why the petitioner should undergo third medical tests at Apollo Hospital, Chennai, when the same tests could be conducted by ESI Medical Board. It is pertinent that the petitioner is not suffering from any cardiac symptoms as opined by Doctor G. Elangovan in Ex.P14 (Ex.R5 report). Unless, the petitioner is examined by a Medical Board and issued with a disability certificate, the management should not presume on the basis of Ex.P13 and P14 that the petitioner is suffering from continued ill-health according to learned counsel for the petitioner and in support this contention he placed reliance on the following authorities.

**2002(2) LLJ 973**

Management of Eagle Flasks Industries Limited

Vs.

Presiding Officer and Another

"In the event of the management having come to the conclusion that the petitioner was medically unfit then the management should have referred the worker to a properly constituted Medical Board, only after giving proper opportunity to the second respondent, and found that the worker medically unfit. Therefore, mere reliance placed on the letter of the second respondent to hold that he was medically unfit to be employed in Madras, cannot be sustained."

27. The respondent management has not conducted any enquiry by giving opportunity the petitioner to prove the factum that the petitioner is affected by continued ill-health. Only on the basis of enquiry report the service of the petitioner should have been terminated, but the respondent without conducting any enquiry arrived the finding that the petitioner is suffering from continued ill-health purely on the basis of Ex.P14 medical report and this procedure is not in accordance with law according to learned counsel for petitioner and he referred to the following citation in support his contention.

Reliance is faced on the ruling reported in 1992(2) LLJ 439,

Lalit Mohan Puri Vs. Pure Drinks (New Delhi) Limited.

"In our view the respondents should have some direct evidence with it to show firstly, that the petitioner was suffering from ill-health and secondly, that he continued to be in ill-health till the time of termination of his services. We are of the opinion that inquiry should have been held if the petitioner continued to be ill-health and the matter should not be left merely to presumptions. For this purpose the respondent was free to hold a proper inquiry where the petitioner could have been examined and even could lead his evidence to show that he was not suffering from ill-health. We are therefore of the view that it was illegal on the part of the respondent to terminate the services of the petitioner and we do not agree with the conclusion arrived at by the Labour Court". The learned counsel for the petitioner submitted that since the management failed to remit the ESI and PF contributions to the concerned authorities it is hesitant to send the petitioner for treatment at ESI Hospital. Further ESI (General Regulation 98) specifies certain conditions and

procedures for discharging employees which the respondent management could not strictly follow, so respondent management has not referred the petitioner to Medical Board of ESI.

28. The petitioner in pursuance of the award passed by the Labour Court was issued with appointment order but before-allotting work he was subjected and tormented by medical examinations at the behest of the respondent management. The two medical certificates, namely, Ex.P13 and P14 have not disclosed any continued ill-health of the petitioner nor any permanent disablement. It is admitted by RW.1 that some employees suffering from heart ailments are working in the respondent management. The petitioner's continued ill-health as alleged by the respondent has not been strictly proved by relevant medical evidence. No enquiry was conducted by the respondent management to find out the alleged continued ill-health of the petitioner as already discussed. The respondent management was not ready to refer the petitioner to the Medical Board of ESI. Under such circumstances, on the basis of the available evidence, namely, Ex.P13, Ex.P14 and Ex.P18 it is difficult to infer that the petitioner is suffering from continued ill-health.

29. The petitioner is suffering from 'Rheumatic Heart Disease' but he can continue sedentary nature of work and to avoid heavy work as per Ex.P14 certificate. The learned counsel for the respondent vehemently argued that the respondent being a Turner he has to do (a) Turning the Machine's punch and dies, Turning the bushes for CNC and other machines, (b) Turning lock nets and making thread for AMC machines, (c) Turning crane wheel and other parts and other miscellaneous jobs and these nature of duties are strenuous and require physical exertion and the petitioner as a cardiac patient could not carry out the work of a Turner. Of course, in Ex.P13 medical certificate, it is stated that the petitioner is medically fit for work, but in Ex.P14 Medical Report there is a suggestion by the Doctor that the petitioner should avoid heavy work and he can do sedentary nature of work. There is no medical opinion given by the Competent Medical Board, so as to precisely decide health condition of petitioner. So, on the sole basis of Ex.P14 medical certificate issued by a private doctor recommended by the respondent management it is not safe to conclude that the petitioner is suffering from continued ill-health. The learned counsel for the petitioner argued that even if the court comes to the conclusion that the petitioner is suffering from heart ailment, respondent/management is bound to provide employment to him suitable to his health condition, in view of the award passed by the Labour Court and in support of his contention he placed reliance on the following authorities:-

(i) **(1994)4SCC460**

Narendra Kumar Chandla

Vs.

State of Haryana and others

"Article 21 of the Constitution protects the right to livelihood as an integral facet of right to life. When an employee is afflicted with unfortunate disease due to which, when he is unable to perform the duties of the posts he was holding, the employer must make every endeavour to adjust him in a post in which the employee would be suitable to discharge his duties".

(ii) **CDJ 2008 MHC 4833 and 2008(4) TLNJ 272 (Civil)**

"It is well settled that a person who is found to be disabled and is not in a position to carry on the work which was assigned to him earlier should be assigned with the duties which he could perform in spite of disability. Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, clearly lays down that the disabled person should not be put in a disadvantageous position due to his disability. Therefore, a duty is cast on the employer to continue the disabled person in employment assigning him the work which he would be in a position to perform."

30. First of all in this case, there is no reliable medical evidence to hold that the petitioner is suffering from continued ill-health. In the absence of such evidence discharging the petitioner from service is certainly, illegal, that too when the respondent has been directed to reinstate the petitioner by an order passed by the Labour Court affirmed by the Hon'ble High Court. The respondent management should not have resorted to denial of employment on the ground of continued ill-health of the petitioner without proper and reliable medical reports. The petitioner who received the appointment order and appeared for medical examination and issued with Ex.P13 certificate which discloses his medical fitness. Again the second medical examination was conducted at the instance of respondent management and it is mentioned in the medical certificate Ex.P14 that petitioner has "no cardiac symptoms". Under such circumstances it cannot be said that petitioner is suffering from continued ill-health.

31. The respondent management without seeking report from Medical Board and without conducting proper enquiry to prove the alleged continued ill-health of the petitioner, has discharged him from service on 22-11-2011 as per Ex.P36. The procedure adopted by the respondent management in discharging the petitioner is certainly unjustifiable and not in consonance with the provision of Industrial Dispute Act and the Regulation 98 of ESI Act.

32. The learned counsel for the petitioner contended that though petitioner is suffering with mild heart ailment he can be provided with medical treatment at ESI Hospital, but the respondent is not ready for sending the petitioner to ESI Hospital since the management failed to remit ESI contribution regularly.

33. It is clear that the respondent management with the only intention of denial of employment to the petitioner has harassed him by subjecting to undergo several medical tests. The respondent management should not have issued Ex.P9 fresh appointment order to appoint the petitioner as a 'Probationer' since Ex.P3 award directs the respondent to reinstate the petitioner with effect from 21-8-1998 with half backwages and with continuity of service. Ex.P9 fresh appointment order has been issued to appoint the petitioner as a Probationer/ Trainee on consolidated pay is certainly a violation of the direction to the respondent as per Ex.P3 award. The further direction of continuity of service has been blatantly flouted and the petitioner has not been duly appointed and no work was allotted to him nor his name was entered into the muster roll. Before reinstating the petitioner he was forced to undergo several medical tests and finally he was illegally discharged. The conduct of the respondent management in discharging the petitioner before appointment is certainly an act of continued victimisation and not in good faith, but in the colourable exercise of the employer's rights as specified 5 (a), (b) in the 5th Schedule, namely, unfair labour practices. On taking into account the oral and documentary evidence adduced on either side, I hold that the petitioner D. Ramesh was not duly reinstated by respondent in compliance with the award passed in ID(L) No. 59/2001 and accordingly I answer Point No. 1. Regarding Point No. 2. I answer that the petitioner D. Ramesh is physically fit to do regular work or sedentary nature of work in the respondent management.

**Point No. 3**

34. There is no medical proof, to conclude that the petitioner is suffering from continued ill-health and he is unfit to do work of a Turner. In the absence of any medical certificate issued by Competent Medical Board nothing could be presumed that the petitioner is suffering with disability and continued ill-health. The respondent management relying on the medical report Ex.P14 illegally discharged the petitioner and terminated his service even before appointment. So the petitioner has been victimised and subjected to unfair labour practice of the respondent management. If the respondent considers the petitioner as suffering from rheumatic heart disease in the light of Ex.P14 (Ex.R5) medical certificate, then, it is advisable to allot him

sedentary nature of work in the respondent management. I conclude that the denial of employment to the petitioner on the ground of continued ill-health and consequently discharging his service with effect from 22-11-2011 by the respondent management is unjustifiable and amounts to acts of continued victimisation and unfair labour practice and accordingly I answer Point No.3.

35. In the result, this industrial dispute is allowed and the respondent management is directed to reinstate the petitioner with effect from 22-11-2011 with half backwages and with continuity of service and all other attendant benefits applicable to him as per Labour Laws.

Dictated to the Stenographer transcribed by her, corrected and pronounced by me in Open Court on this the 29th day of January, 2016.

**N. SIVAKUMAR,**  
Presiding Officer,  
Labour Court, Puducherry.

*List of petitioner's witnesses:*

PW.1 — 15-7-2013 — D. Ramesh

*List of respondent's witnesses:*

RW.1 — 6-6-2014 — K. Shanmugam

*List of petitioner's exhibits:*

- Ex.P1 — Copy of the Apprenticeship Order in Trainer of the Petitioner, dated 8-7-1996.
- Ex.P2 — Copy of the ESI Identity Card of petitioner.
- Ex.P3 — Copy of the Labour Court Order in I.D. No. 59/2001, dated 31-1-2003.
- Ex.P4 — Copy of the Hon'ble High Court Order in WP No. 11476 of 2003, dated 8-2-2011.
- Ex.P5 — Copy of the Hon'ble High Court Order in Writ Appeal WA No. 578 of 2011, dated 7-4-2011.
- Ex.P6 — Copy of the Intimation letter by the Labour Commissioner and Labour Officer, Labour Department, dated 5-7-2011.
- Ex.P7 — Copy of the Memorandum in Labour Commissioner, Labour Department, dated 8-7-2011.
- Ex.P8 — Copy of the letter issued by the respondent management to the petitioner, dated 25-7-2011.
- Ex.P9 — Copy of the Probation Order issued by the respondent management to the petitioner, dated 25-7-2011.

- Ex.P10 — Copy of the notice sent by petitioner counsel to the respondent management, dated 26-7-2011.
- Ex.P11 — Copy of the notice sent by respondent management to the petitioner counsel, dated 27-7-2011.
- Ex.P12 — Copy of the letter sent by respondent management to the petitioner for medical checkup, dated 27-7-2011.
- Ex.P13 — Copy of the medical fitness certificate issued by PIMS Hospital, dated 28-7-2011.
- Ex.P14 — Copy of the letter issued by respondent management to the petitioner with related to his medical fitness certificate, dated 1-8-2011.
- Ex.P15 — Copy of the notice sent by petitioner counsel to the respondent management, dated 3-8-2011.
- Ex.P16 — Copy of the Apprenticeship Order issued by respondent management to D.Kulanjinathan, dated 6-8-2011.
- Ex.P17 — Copy of the letter issued by the petitioner (self medical report) to the respondent management, dated 10-8-2011.
- Ex.P18 — Copy of the medical fitness certificate of petitioner.
- Ex.P19 — Copy of the letter issued by the respondent management to the petitioner, dated 12-8-2011.
- Ex.P20 — Copy of the letter issued by the petitioner to the respondent management, dated 18-8-2011.
- Ex.P21 — Copy of the new ESI number issued by the petitioner, dated 19-8-2011.
- Ex.P22 — Copy of the letter issued by the petitioner to the Labour Commissioner, Labour Department, dated 26-8-2011.
- Ex.P23 — Copy of the letter issued by the petitioner to the Labour Commissioner, Labour Department, dated 14-9-2011.
- Ex.P24 — Copy of the Intimation letter sent by Labour Commissioner to the petitioner, dated 19-9-2011.
- Ex.P25 — Copy of the letter issued by Pattali Thozhir Sangam to the Inspector of Factories, dated 19-9-2011.
- Ex.P26 — Copy of the letter issued by Inspector of Factories to the respondent management, dated 23-9-2011.

- Ex.P27— Copy of the letter issued by respondent management to the petitioner, dated 24-9-2011.
- Ex.P28— Copy of the letter issued by Pattali Thozhir Sangam to the Inspector of Factories, dated 29-9-2011.
- Ex.P29— Copy of the letter issued by the petitioner to the respondent management, dated 3-10-2011.
- Ex.P30— Copy of the letter issued by petitioner to the Inspector of Factories, dated 16-11-2011.
- Ex.P31— Copy of the registered postal letter and acknowledgment card issued by the petitioner to the respondent management, dated 17-11-2011.
- Ex.P32— Copy of the medical receipt issued by ESI Hospital to the petitioner, dated 22-11-2011.
- Ex.P33— Copy of the medical receipt issued by ESI Hospital to the petitioner, dated 22-11-2011.
- Ex.P34— Copy of the medical receipt issued by ESI Hospital to the petitioner.
- Ex.P35— Copy of the medical receipt issued by ESI Hospital to the petitioner.
- Ex.P36— Copy of the termination order issued by the respondent management to the petitioner, dated 22-11-2011.
- Ex.P37— Copy of the registered postal letter and acknowledgment card issued by the petitioner to the respondent management, dated 23-11-2011.
- Ex.P38— Copy of the registered postal letter and acknowledgment card issued by the petitioner to the respondent management, dated 23-11-2011.
- Ex.P39— Copy of the registered postal letter and acknowledgment card sent by petitioner to the respondent management, dated 26-11-2011.
- Ex.P40— Copy of the registered postal letter sent by the petitioner to the respondent management, dated 9-12-2011.
- Ex.P41— Copy of the letter issued by the petitioner to the ESI Officer, dated 29-11-2011.
- Ex.P42— Copy of the letter issued by the petitioner to the Labour Commissioner, Labour Department, dated 13-12-2011.
- Ex.P43— Copy of the letter sent by ESI Officer to the petitioner, dated 16-12-2011.

- Ex.P44— Copy of the letter sent by Inspector of Factories to the respondent management, dated 19-12-2011.
- Ex.P45— Copy of the letter issued by the petitioner to the ESI Officer, dated 11-1-2012.
- Ex.P46— Copy of the letter sent by ESI Officer to the respondent management, dated 24-1-2012.
- Ex.P47— Copy of the letter issued by the petitioner to the Labour Commissioner, Labour Department, dated 16-2-2012.
- Ex.P48— Copy of the letter issued by the petitioner to the Labour Commissioner, Labour Department, dated 7-8-2012.
- Ex.P49— Copy of the letter issued by the petitioner to the Labour Commissioner, Labour Department, dated 10-10-2012.
- Ex.P50— Copy of the letter issued by the petitioner to the Labour Commissioner, Labour Department, dated 13-12-2012.
- Ex.P51— Copy of the Hon'ble High Court Order in WP No. 5290 of 2012, dated 18-12-2012.
- Ex.P52— Copy of the letter sent by Labour Commissioner, Labour Department to the petitioner, dated 31-1-2013.
- Ex.P53— Copy of the petition filed by the petitioner before the Labour Conciliation Officer regarding the dispute, dated 4-2-2013.
- Ex.P54— Copy of the Failure Report in Conciliation Officer, Labour Department, dated 13-2-2013.
- Ex.P55— Copy of the Govt. Order in Labour Commissioner, Labour Department, dated 15-2-2013.
- Ex.P56— Copy of the list of names in permanent labourers (Technical and Non-Technical) are working in various departments from the respondent management.

*List of respondent's exhibits:*

- Ex.R1 — Copy of letter, dated 25-7-2011 from respondent to petitioner regarding the reinstatement with 50% of back wages and other benefits as per the Court Order ID No. 59/2001, dated 31-1-2003 and High Court Order W.P. No. 11476/2003, dated 8-2-2011.
- Ex.R2 — Copy of letter from respondent to PIMS Hospital, regarding the Pre-employment Medical Checkup of the petitioner, dated 27-7-2011.

- Ex.R3 — Copy of letter from respondent to petitioner, regarding the Pre-employment Medical Checkup in PIMS Hospital, dated 27-7-2011.
- Ex.R4 — Copy of Laboratory report of petitioner from PIMS Hospital, dated 28-7-2011.
- Ex.R5 — Copy of letter from A.G. Padmavati's Hospital Ltd., to Dr. G. Subbaiah, MBBS, dated 29-7-2011.
- Ex.R6 — Copy of letter from the respondent to the petitioner, dated 24-9-2011.
- Ex.R7 — Copy of reply letter, dated 28-9-2011 from the petitioner to the respondent for the letter, dated 24-9-2011.

- Ex.R8 — Copy of letter from the respondent to the petitioner regarding that reply letter, dated 29-9-2011.
- Ex.R9 — Copy of reply letter, dated 3-10-2011 from the petitioner to the respondent regarding the letter, dated 26-9-2011,
- Ex.R10 — Copy of Pay Slip of the petitioner for the period from 27-7-2011 to 31-8-2011, and wages for the period from 1-9-2011 to 30-9-2011 and wages paid for October 2011 (30 days).
- Ex.R11 — Copy of letter from respondent to the petitioner, dated 22-11-2011.

**N. SIVAKUMAR,**  
Presiding Officer,  
Labour Court, Puducherry.

**GOVERNMENT OF PUDUCHERRY**  
**DIRECTORATE OF SCHOOL EDUCATION**

*No. 536-540/DSE/EC/C/2016.*

*Puducherry, the 25th April 2016.*

**NOTIFICATION**

It is hereby informed that the following candidates have lost their original Higher Secondary Examination Mark Certificates and beyond the scope of recovery, necessary steps have been taken to issue duplicate certificates. If any one finds the original mark certificate(s), it/they may be sent to the Secretary, State Board of Secondary Examinations, College Road, Chennai-600 006 for cancellation, as it is/they are no longer valid.

Sl. No.	Name of the applicant	Register No., session and year	Sl. No. of the mark certificate	School in which studied last
(1)	(2)	(3)	(4)	(5)
Thiru/Tmt./Selvi :				
1	Deepan, R.	526860, March 2009	G 455581	Chevalier Sellane Government Higher Secondary School, Kalapet, Puducherry.
2	Kamarudeen, S.	576634, March 2011	5982874	V.O.C. Government Higher Secondary School, Puducherry.
3	Revathy, P.	723277, March 2000	35041	Sri NKC Government Girls' Higher Secondary School, Kurusukuppam Puducherry.
4	Senthil Kumar, N.	761593, March 2001	1744381	V.O.C. Government Higher Secondary School, Puducherry.
5	Priyadharshini, V.	542733, March 2013	7986130	Immaculate Heart of Mary's Girls' Higher Secondary School, Puducherry.

**J. KRISHNARAJU,**  
Joint Director.